

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

ERIC ANGEL THOMAS, ) Civil No. 07cv2257-IEG (BLM)  
)  
Plaintiff, )  
) **ORDER GRANTING REQUEST FOR**  
v. ) **ENLARGEMENT OF TIME TO FILE**  
) **MOTION TO DISMISS OR ANSWER**  
M.C. KRAMER, Warden, )  
) [Doc. No. 6]  
Defendant. )  
\_\_\_\_\_ )

On February 8, 2008, Respondent in the above matter requested an enlargement of time to file a motion to dismiss or, alternately, an answer. Doc. No. 6. In support, he noted his counsel's February 11, 2008 medical procedure and upcoming vacation abroad. Id. Respondent's request is hereby **GRANTED** as follows.

1. If Respondent contends the Petition can be decided without the Court's reaching the merits of Petitioner's claims (e.g., because Respondent contends Petitioner has failed to exhaust any state remedies as to any ground for relief alleged in the Petition, or that the Petition is barred by the statute of limitations, or that the Petition is subject to dismissal under Rule 9 of the Rules Governing § 2254 Cases, or that all of the claims are

1 procedurally defaulted, or that Petitioner is not in custody),  
2 Respondent shall file a motion to dismiss pursuant to Rule 4 of the  
3 Rules Governing § 2254 Cases no later than April 7, 2008. The  
4 motion to dismiss shall not address the merits of Petitioner's  
5 claims, but rather shall address all grounds upon which Respondent  
6 contends dismissal without reaching the merits of Petitioner's  
7 claims is warranted. At the time the motion is filed, Respondent  
8 shall lodge with the Court all records bearing on Respondent's  
9 contention in this regard. A hearing date is not required for the  
10 motion to dismiss.

11 If Respondent contends Petitioner has failed to exhaust any  
12 state remedies as to any ground for relief alleged in the Petition,  
13 the Motion to Dismiss shall also specify the state remedies still  
14 available to Petitioner.

15 2. If Respondent files a motion to dismiss, Petitioner  
16 shall file his opposition, if any, to the motion no later than April  
17 28, 2008. At the time the opposition is filed, Petitioner shall  
18 lodge with the Court any records not lodged by Respondent which  
19 Petitioner believes may be relevant to the Court's determination of  
20 the motion.

21 3. Unless the Court orders otherwise, Respondent shall not  
22 file a reply to Petitioner's opposition to a motion to dismiss. If  
23 the motion is denied, the Court will afford Respondent adequate time  
24 to respond to Petitioner's claims on the merits.

25 4. If Respondent does not contend that the Petition can be  
26 decided without the Court reaching the merits of Petitioner's  
27 claims, Respondent shall file and serve an answer to the Petition,  
28 as well as points and authorities in support of such answer, no

1 later than April 7, 2008. At the time the answer is filed,  
2 Respondent shall lodge with the Court all records bearing on the  
3 merits of Petitioner's claims. The lodgments shall be accompanied  
4 by a notice of lodgment which shall be captioned "Notice of Lodgment  
5 in 28 U.S.C. § 2254 Habeas Corpus Case- To be Sent to Clerk's  
6 Office." Respondent shall not combine separate pleadings, orders or  
7 other items into a combined lodgment entry. Each item shall be  
8 numbered separately and sequentially.

9 5. Petitioner may file a traverse to matters raised in  
10 the answer no later than May 5, 2008. Any traverse by Petitioner  
11 (a) shall state whether Petitioner admits or denies each allegation  
12 of fact contained in the answer; (b) shall be limited to facts or  
13 arguments responsive to matters raised in the answer; and (c) shall  
14 not raise new grounds for relief that were not asserted in the  
15 Petition. Grounds for relief withheld until the traverse will not  
16 be considered. No traverse shall exceed ten (10) pages in length  
17 absent advance leave of Court for good cause shown.

18 6. A request by a party for an extension of time within  
19 which to file any of the pleadings required by this Order should be  
20 made in advance of the due date of the pleading, and the Court will  
21 grant such a request only upon a showing of good cause. Any such  
22 request shall be accompanied by a declaration under penalty of  
23 perjury explaining why an extension of time is necessary.

24 7. Unless otherwise ordered by the Court, this case shall  
25 be deemed submitted on the day following the date Petitioner's  
26 opposition to a motion to dismiss and/or his traverse is due.

27 8. Every document delivered to the Court must include a  
28 certificate of service attesting that a copy of such document was

1 served on opposing counsel (or on the opposing party, if such party  
2 is not represented by counsel). Any document delivered to the Court  
3 without a certificate of service will be returned to the submitting  
4 party and disregarded by the Court.

5 9. Petitioner shall immediately notify the Court and  
6 counsel for Respondent of any change of Petitioner's address. If  
7 Petitioner fails to keep the Court informed of where Petitioner may  
8 be contacted, this action will be subject to dismissal for failure  
9 to prosecute.

10 **IT IS SO ORDERED.**

11 DATED: February 19, 2008

12 

13 BARBARA L. MAJOR  
14 United States Magistrate Judge

15 COPY TO:

16 HONORABLE IRMA E. GONZALEZ  
17 UNITED STATES DISTRICT JUDGE

18 ALL COUNSEL AND PARTIES  
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